

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,<sup>1</sup>

Reorganized Debtor.

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE  
OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

Chapter 11

Case No. 19-34054-sgj11

Adv. Pro. No. 21-03076-sgj

Civil Action No. 3:22-CV-203-S

*Consolidated with:*

Case No. 3:22-cv-229

Case No. 3:22-cv-253

Case No. 3:22-cv-367

Case No. 3:22-cv-369

Case No. 3:22-cv-370

<sup>1</sup> The last four digits of the Reorganized Debtor’s taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor’s headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.



**THE LITIGATION TRUSTEE’S UNOPPOSED MOTION FOR BRIEF EXTENSION OF TIME AND LEAVE TO FILE A CONSOLIDATED RESPONSE BRIEF IN EXCESS OF TWENTY-FIVE PAGES**

Marc S. Kirschner (the “Litigation Trustee”), by and through his undersigned counsel, respectfully requests that the Court grant his *Unopposed Motion for Brief Extension of Time and Leave to File a Consolidated Brief in Excess of Twenty-Five Pages* (the “Motion”) and allow the Litigation Trustee to file a Consolidated Response Brief (as defined herein) not to exceed 35 pages. By this Motion the Litigation Trustee also requests a brief extension of the time to file the Consolidated Response Brief to May 4, 2022, which is the date by which the last of the responses would otherwise be due. In support of this Motion, the Litigation Trustee states as follows:

**I. Relevant Factual Background**

1. On October 15, 2021, the Litigation Trustee commenced the above-captioned adversary proceeding against Defendants [Dkt. No. 1 in Adv. Proc. No. 21-03076] (the “Complaint”).

2. After Defendants<sup>2</sup> filed motions to withdraw the reference, on April 6, 2022, the Bankruptcy Court issued a *Report and Recommendation to the District Court Proposing that It: (A) Grant Defendants’ Motions to Withdraw the Reference at Such Time as the Bankruptcy Court Certifies that Action Is Trial Ready; but (B) Defer Pre-Trial Matters to the Bankruptcy Court* (the

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<sup>2</sup> “Defendants” includes all defendants set forth in the case caption, except for SAS Asset Recovery, Ltd. Defendants who filed motions to withdraw the reference include: Scott Ellington, Isaac Leventon, Frank Waterhouse, and CPCM, LLC (the “Former Employee Defendants”); Mark A. Okada (“Okada”), The Mark & Pamela Okada Family Trust – Exempt Trust #1 (“MPO Trust 1”) and Lawrence Tonomura in his Capacity as Trustee, and The Mark & Pamela Okada Family Trust – Exempt Trust #2 (“MPO Trust 2”) and Lawrence Tonomura in his Capacity as Trustee (collectively, the “Okada Defendants”); NexPoint Advisors L.P. (“NPA”) and Highland Capital Management Fund Advisors, L.P. (“HCMFA”); James Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc. (collectively, the “Dondero Defendants”); Grant James Scott III; and CLO Holdco, Ltd., Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, and Charitable DAF Holdco, Ltd. (the “CLO Holdco-Related Defendants”).

“Report and Recommendation”) [Dkt. No. 151 in Adv. Proc. No. 21-03076; transmitted to this Court at Dkt. No. 14].

3. On April 15, 2022, four separate groups of defendants filed objections to the Bankruptcy Court’s Report and Recommendation:

- The Former Employee Defendants filed an *Objection to the Report and Recommendation* [Dkt. No. 16] (the “Former Employee Defendants’ Objection”)
- The Okada Defendants filed a *Limited Objection to the Report and Recommendation of the Bankruptcy Court Regarding Motion to Withdraw the Reference* [Dkt. No. 17] (the “Okada Defendants’ Objection”)
- The CLO Holdco-Related Defendants filed an *Objection to the Report and Recommendation* [Dkt. No. 19] (the “CLO Holdco-Related Defendants’ Objection”)
- NPA and HCMFA filed a *Limited Objection to Report and Recommendation to the District Court on the Motion to Withdraw the Reference* [Dkt. No. 20] (the “NPA and HCMFA Objection”).

4. Five days later, on April 20, 2022, a fifth group of defendants, the Dondero Defendants, filed their *Objections to the Report and Recommendation of the Bankruptcy Judge* [Dkt. No. 22] (the “Dondero Defendants’ Objection”).

5. Pursuant to Rule 9033(b) of the Federal Rules of Bankruptcy Procedure, the Litigation Trustee has 14 days from the date of each Objection to file a response in support of the Report and Recommendation.

6. The Litigation Trustee’s current deadline to respond to each of the Former Employee Defendants’ Objection, the Okada Defendants’ Objection, CLO Holdco-Related Defendants’ Objection, and the NPA and HCMFA Objection is currently April 29, 2022. The Litigation Trustee’s current deadline to respond to the Dondero Defendants’ Objection is May 4, 2022.

## **II. Basis for Relief**

1. For the Court's and the parties' convenience, the Litigation Trustee seeks to file a single, consolidated Response Brief in Support of the Report and Recommendation (the "Consolidated Response Brief"), setting forth the Litigation Trustee's responses to all of Defendants' distinct and overlapping arguments objecting to Judge Jernigan's Report and Recommendation.

2. Compelling reasons exist for the Litigation Trustee's request that he be permitted to file a Consolidated Response Brief not to exceed 35 pages. While the Litigation Trustee intends to keep the Consolidated Response Brief as succinct as possible, he submits that the Consolidated Response Brief will need to exceed 25 pages in order to adequately address the numerous arguments objecting to the Report and Recommendation, raised in five separately filed Objections. The Report and Recommendation, in turn, addresses six separate Motions to Withdraw the Reference, filed by 18 different defendants, who advanced multiple grounds for withdrawal.

3. Defendants' five separate Objections to the Report and Recommendation total 60 pages in length. Absent a consolidated response brief, the Litigation Trustee will have to file five separate and potentially duplicative response briefs, which almost certainly will far exceed, in total, 35 pages in length. The 35 pages requested by the Litigation Trustee is just 10 more pages that would be permitted to respond to a single Objection and will provide the Litigation Trustee sufficient opportunity to address all of Defendants' independent and intertwined arguments.

4. Additionally, so that the Litigation Trustee can address the arguments advanced by all Defendants in a single response, the Litigation Trustee requests a brief extension of time to respond to those Objections filed on April 15, 2022, such that the deadline for submission of a Consolidated Response Brief would be May 4, 2022. That is the current deadline for responding

to the Dondero Defendants' Objection. An earlier deadline would require the Litigation Trustee to sacrifice a portion of his permitted time to respond to the related Dondero Defendants' Objection.

5. Counsel for the Litigation Trustee conferred with counsel for the Defendants who filed Objections, and such Defendants do not oppose the relief sought herein.

6. For these reasons, the Litigation Trustee respectfully requests the Court's leave to file a Consolidated Response Brief not to exceed 35 pages in length to be filed no later than May 4, 2022.

**REQUESTED RELIEF**

For the foregoing reasons, the Litigation Trustee respectfully asks the Court to grant the present Motion and allow the Litigation Trustee to file a Consolidated Response Brief in Support of the Report and Recommendation not to exceed 35 pages, no later than May 4, 2022. The Litigation Trustee further requests such additional relief as to which he may be justly entitled.

Dated: April 22, 2022

Respectfully submitted,

SIDLEY AUSTIN LLP

/s/ Paige Holden Montgomery

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*Counsel for the Litigation Trustee*

**CERTIFICATE OF CONFERENCE**

I hereby certify that, on April 22, 2022, the undersigned counsel for the Litigation Trustee conferred with counsel for the Defendants whom filed Objections to the Report and Recommendation. All such Defendants do not oppose the relief requested in this Motion.

*/s/ Anna Deknatel* \_\_\_\_\_  
Anna Deknatel

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail via the Court's ECF system to parties authorized to receive electronic notice in this case on April 22, 2022.

/s/ Paige Holden Montgomery  
Paige Holden Montgomery

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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**[PROPOSED] ORDER GRANTING THE LITIGATION TRUSTEE’S UNOPPOSED  
MOTION FOR BRIEF EXTENSION OF TIME AND LEAVE TO FILE A  
CONSOLIDATED RESPONSE BRIEF IN EXCESS OF TWENTY-FIVE PAGES**

Upon consideration of the *Litigation Trustee’s Unopposed Motion for Leave to File a Brief in Excess of Twenty-Five Pages* (the “Motion”), **IT IS HEREBY ORDERED** that the Motion is GRANTED in its entirety.

1. The Litigation Trustee<sup>2</sup> may file a Consolidated Response Brief in Support of the Report and Recommendation in excess of 25 pages. The Litigation Trustee’s Consolidated Response Brief shall not exceed 35 pages.
2. The Litigation Trustee’s Consolidated Response Brief shall be filed no later May 4, 2022.

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Honorable Karen Gren Scholer  
United States District Judge

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<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings given to them in the Motion.